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COVID-19 Legal Insights



In this issue:

1. Criminal proceedings during the state of emergency

What is the impact of COVID-19 on criminal cases in the stage of criminal investigation, preliminary chamber, court proceedings or serving the sentence?

A state of emergency was declared in Romania on 16 March 2020 by Presidential Decree No. 195/2020 (the “Decree”), published in the Official Gazette No. 212/2020.

The Decree institutes a 30-day state of emergency throughout the Romanian territory and establishes first emergency measures of direct and immediate application, as well as measures of gradual applicability with a view to preventing the spread of COVID-19 and handling the consequences of this epidemic.

1. How does the current state of emergency impact on the criminal court proceedings?

According to Article 42 of the Decree, during the state of emergency, court proceedings will continue solely in cases that are of particular urgency. The list of such cases is to be established by the Management Committee of the High Court of Cassation and Justice or by the homologous boards of the courts of appeal for cases that fall within their respective jurisdiction. The courts may schedule short-notice hearings, including from one day to the next, or even on the same day.

In addition to those cases that the judge or the court considers urgent, prosecution will continue in the following cases: cases concerning serious offenses; cases where preventive measures have been ordered; cases concerning challenges against pretrial measures; cases concerning international judicial cooperation; cases involving victim and witness protection; cases concerning the provisional application of medical safety measures; cases concerning offenses against national security; cases concerning acts of terrorism or money laundering.

However, cases may be adjourned, upon request, if the party concerned is isolated, quarantined or hospitalized in the connection to the COVID-19 epidemic. Where it rejects

the motion to adjourn the case, the court shall reserve judgment at the party's request or *ex officio* in order for written submissions to be made.

Detainees shall be heard by means of videoconference at the place of confinement or in premises that meet the appropriate sanitary requirements, without the detained person's consent being necessary.

2. What matters are suspended *ipso jure* during the state of emergency?

Criminal cases that are not qualified as urgent, pending before the courts, including those being tried in preliminary chamber, are suspended *ipso jure* during the state of emergency.

New hearings will be established and procedural acts taken by care of the judge or of the court within 10 days from the termination of the state of emergency.

All prescription and forfeiture terms are deemed not yet started, or, where they have already started, are being suspended for the entire duration of the state of emergency. The terms for service of resolutions, and those for filing and solving complaints, other than those suspended, are also being stayed. A new term, of the same duration, shall start upon the end of the state of emergency. The terms of appeal in criminal cases, whether ongoing or due to start during the state of emergency (except for those in urgent cases for which trial shall continue), are being interrupted and new terms of the same duration shall start upon the termination of the state of emergency. Upon the termination of the state of emergency, trials shall be resumed *ex officio*; courts will have 10 days to schedule new hearings and issue summons for the parties.

3. How are the criminal investigation activities carried out during these times?

Throughout the state of emergency, criminal investigation activities and the activities of judges of rights and freedoms will only continue with respect to:

- a) Cases where preventive measures or victim or witness protection measures have been ordered or proposed, cases concerning provisional medical safety measures, cases involving underage aggrieved parties;
- b) Criminal investigation acts and measures the postponement of which would jeopardize the gathering of evidence or the apprehension of the suspect or of the defendant, as well as those regarding early hearing;
- c) Cases where the urgency is justified by the national state of emergency, other urgent cases deemed as such by the prosecutor overseeing or conducting the criminal prosecution.

4. What are the applicable provisions with respect to the enforcement of punishments?

Enforcement of supervision is being stayed throughout the state of emergency, where the supervision entails any of the following:

- The presence of the person at the probation service;

- Personal visits made by the probation counsellor;
- Carrying out unpaid community service work, taking vocational training courses or professional qualification courses, attending social reintegration programs, providing community service in lieu of criminal fine.

For those serving prison terms or measures involving confinement, the following rights shall be suspended for the entire duration of the state of emergency:

- The right to receive visits;
- The right to conjugal visit;
- The right to receive goods by visit; as well as
- Rewards consisting in permission to spend time outside the penitentiary.

The duration and number of telephone calls for maximum-security convicts shall be increased to a maximum of 45 minutes per day, while for convicted persons located in closed, semi-open, open confinement, provisional confinement or persons for whom no confinement regime has been determined, calls shall be increased to a maximum of 75 minutes per day. Regardless of their disciplinary situation and the periodicity of their contact with their family, the detainees' right to online calls shall be accordingly supplemented depending on the number of visits they are entitled to in accordance with the type of their confinement.

5. Other provisions

The organisation of public auctions for the sale of movable assets seized in criminal proceedings is suspended.

In cases where no criminal investigation acts are being conducted or the criminal proceedings are suspended as per the Decree, the prescription of criminal liability is suspended for the duration of the state of emergency.

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Editors

COVID-19 Legal Insights is our response to the COVID-19 outbreak. We shall keep you informed on the various legal challenges posed by the coronavirus, thanks to a dedicated practice group comprising lawyers with different backgrounds, such as compliance/regulatory, corporate and commercial, insurance, labour and employment, litigation and arbitration, insolvency, public procurement, data privacy, tax and customs. In addition, our taskforce offers strategic advice on crisis-specific matters: corporate restructuring, review and (re)negotiation of agreements (including collective bargaining agreements and individual employment contracts), performance of the contracts which are affected by force majeure and hardship, unblocking pre-litigation relationships, etc. To keep abreast of developments, please feel free to regularly check our dedicated online resource: <http://www.tuca.ro/covid-19/>



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